

Notice of Allowability

Application No.

10/646,291

Examiner

Arnel C. Lavarias

Applicant(s)

BERMAN, ARTHUR

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/20/05.
2. ☒ The allowed claim(s) is/are 5-7, 12-15, 19 (renumbered 1-8).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 7/20/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 9/20/05.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

THONG NGUYEN
PRIMARY EXAMINER
GROUP 2800

DETAILED ACTION

Response to Amendment

1. The amendments to the specification of the disclosure in the submission dated 7/20/05 are acknowledged and accepted. In view of these amendments, the objections to the specification in Section 7 of the Office Action dated 6/20/05 are respectfully withdrawn.
2. The cancellation of Claims 71-92 in the submission dated 7/20/05 is acknowledged and accepted.

Election/Restrictions

3. Applicant's election with traverse of Invention I, Species 2 in the reply filed on 7/20/05 is again acknowledged. The traversal is on the ground(s) that if the search and examination of an entire application can be made without serious burden, examination on the merits is warranted. This is not found persuasive because Applicant has not provided any evidentiary showing that the search and examination of the entire application would not be a serious burden to the examiner. Applicants note that several of the groups are "related" and hence have already been examined. However, Examiner notes that each of the groups and species have particular distinct subject matter not found in each of the other groups and species, as previously set forth in the restriction requirement. Thus, a complete search and examination of each of the inventions and groups in the application, except for that which was elected, has not been performed. In addition, MPEP 803 states that "For purposes of the initial requirement, a serious burden on the examiner may be

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prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP §808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.” The Examiner has provided details regarding a showing of serious burden in the restriction requirement as previously set forth.

The requirement is still deemed proper and is therefore made FINAL.

Allowable Subject Matter

4. Claims 5-7, 12-15, 19 are allowed.
5. It is noted that by virtue of their dependency to allowable Claims 5-6, Claims 13-15, and 19, which are drawn to Invention I, Species 3, are also allowable.

EXAMINER’S AMENDMENT

6. An examiner’s amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner’s amendment was given in a telephone interview with John W. Carpenter (415-659-5927) on 9/20/05 (See attached Interview Summary dated 9/20/05).

The application has been amended as follows:

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Cancel Claims 1-2, 21-30, 32-37, 43-44, 46-48, 55-70.

7. The following is an examiner's statement of reasons for allowance:

Claim 5 is allowable over the cited art of record for at least the reasons as previously set forth in Section 18 of the Office Action dated 6/20/05. Claims 6-7, 13-15, 19 are dependent on Claim 5 and hence are allowable for at least the same reasons Claim 5 is allowable.

Claim 12 is allowable over the cited art of record for at least the reasons as previously set forth in Section 18 of the Office Action dated 6/20/05.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnel C. Lavarias whose telephone number is 571-272-2315. The examiner can normally be reached on M-F 9:30 AM - 6 PM EST.

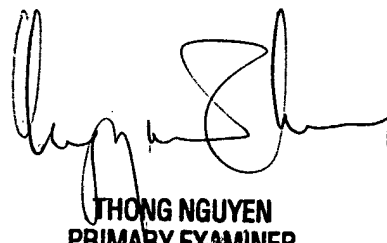
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arnel C. Lavarias
9/20/05



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